

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
KSTC-TV, LLC)	
)	CSR-7175-S
Request for Significantly Viewed Status)	

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 2007

Released: July 13, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KSTC-TV, LLC, licensee of station KSTC-TV, Minneapolis-St. Paul, Minnesota (“KSTC-TV”), filed the above-captioned petition seeking a ruling that it is significantly viewed in the four counties that comprise the Mankato, Minnesota DMA.¹ Letters in support of this petition were filed on behalf of three sports organizations in the Mankato market.² An opposition to this request was filed on behalf of United Communications Corporation, licensee of station KEYC-TV, Mankato, Minnesota (“KEYC-TV”) to which KSTC-TV replied.³

II. BACKGROUND

2. In 1972, in Appendix B to the *Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order*, the Commission established a list of significantly viewed stations based on surveys for the periods May 1970, November 1970, and February/March 1971.⁴ Section 76.54(d) of the Commission’s rules allows television broadcast stations not encompassed by the surveys (*i.e.*, not on-the-air at the time the surveys were taken) to demonstrate “significantly viewed status on a county-wide basis by independent professional audience surveys which cover three separate, consecutive

¹Those counties are: Blue Earth, Brown, Watonwan, and Martin, Minnesota.

²Letters were filed by the Minnesota Timberwolves of the National Basketball Association, the Minnesota Wild of the National Hockey League, the Minnesota State High School League, and the Stuart Swartz Sports Media Consulting.

³Prior to this, KEYC-TV filed a “Notice of Objection to Notice of Viewing Study and of Plan to File Opposition,” which KSTC-TV opposed and to which KEYC-TV replied. The arguments raised in these pleadings, however, need not be addressed here in view of the subsequently filed opposition and reply. We also deny KSTC-TV’s motion to dismiss KEYC-TV’s subsequently filed opposition as late-filed in view of KEYC-TV’s expressed intention to file such opposition.

⁴36 FCC 2d 326 (1972).

four-week periods” during the first three years of the station’s operation which are comparable to the surveys used in compiling Appendix B.⁵ Alternatively, stations may seek to establish significantly viewed status on an individual community or system-wide basis, pursuant to Section 76.54(b) of the rules.⁶ Section 76.54(b) requires that surveys must be performed by an independent professional audience survey organization of “noncable television homes covering at least two weekly periods separated by at least thirty (30) days, but no more than one of which shall be a week between the months of April and September. If two surveys are taken, they shall include samples sufficient to assure that the combined surveys result in an average figure at least one standard error above the required viewing level. If surveys are taken for more than 2-weekly periods in any 12 months, all such surveys must result in an average figure at least one standard error above the required viewing level. If a cable television system serves more than one community, a single survey may be taken, provided that the sample includes non-cable television homes from each community that are proportional to the population.”⁷ Section 76.5(i) of the Commission’s rules requires that independent stations achieve a share of total viewing hours of at least 2 percent and a net weekly circulation share of 5 percent in order to be declared significantly viewed.⁸ For network stations, the shares are 3 percent of total viewing hours and a net weekly circulation of 25 percent.⁹

III. DISCUSSION

3. In support of its request, KSTC-TV states that it commenced operations in 1994 and, under prior ownership, improved its facilities in 2002 which resulted in expanded signal coverage in the Mankato DMA.¹⁰ KSTC-TV states that, historically, Minneapolis station KMSP-TV was the Mankato DMA’s source for substantial amounts of local programming, including local professional, college, and high school sports.¹¹ KMSP-TV is also significantly viewed throughout the market.¹² KSTC-TV maintains, however, that after KMSP-TV became affiliated with the Fox Television Network in 2002, it gradually ceased broadcast of much of its original local programming and that such programming is now provided by KSTC-TV.¹³ Despite this, KSTC-TV states that it is not carried routinely on the Mankato DMA cable systems because, unlike KMSP-TV, it is not considered significantly viewed in the counties

⁵47 C.F.R. § 76.54(d). If a station can demonstrate that it has had a significant technical upgrade of its facilities at a later date, it may then use data for the three years following the upgrade. In order to make such a demonstration, the station must file a petition for special relief seeking a waiver of the rules, along with its request for significantly viewed status, to request status as “new” for significantly viewed purposes in order to use data outside of its original three-year period. Such waiver must be supported by engineering information that confirms the upgrade and must be accompanied by a filing fee.

⁶47 C.F.R. § 76.54(b).

⁷*Id.*

⁸47 C.F.R. § 76.5(i).

⁹*Id.*

¹⁰Petition at 2. KSTC-TV’s original call letters were KVBM. It was previously owned by Hubbard Broadcasting, Inc.

¹¹*Id.* at 3.

¹²*Id.*

¹³*Id.*

of Blue Earth, Brown, Watonwan, and Martin, which comprise the Mankato DMA.¹⁴ KSTC-TV argues that classifying it as significantly viewed in these four counties would return much of the Minnesota-based local programming to the Mankato cable systems that has previously been supplied by KMSP-TV, as well as placing KSTC-TV on an equal footing with the other Minneapolis stations which are considered to be significantly viewed in the market. KSTC-TV argues that, as a relatively new station which improved its coverage as late as 2002, it is entitled to use county data reasonably consistent with Section 76.54(d) of the Commission's rules.¹⁵ As such, KSTC-TV submits the results of two weekly surveys performed during the weeks of February 16-22, 2006, and May 4-10, 2006, and argues that these surveys demonstrate that it is significantly viewed in the counties of Blue Earth, Brown, Watonwan, and Martin, Minnesota.¹⁶

4. In opposition, KEYC-TV argues that KSTC-TV's request is yet another attempt by a Twin Cities station to encroach into the Mankato DMA.¹⁷ KEYC-TV states that, since 1960, it has provided outstanding local service to the small Mankato DMA and grant of KSTC-TV's request would destroy KEYC-TV's ability to continue to provide that same level of service.¹⁸ KEYC-TV points out that although KSTC-TV is apparently seeking significantly viewed status in a number of cable communities in the Mankato market, in view of its submission pursuant to Section 76.54(b) of the rules, it does not identify any of these communities.¹⁹ Instead, KSTC-TV simply states that it is seeking significantly viewed status in the four counties comprising the Mankato DMA.²⁰ KEYC-TV argues, therefore, that KSTC-TV's submission fails to satisfy the requirements established by Section 76.54(b).²¹ KEYC-TV states that the data presented are not accompanied by a letter from Nielsen Media Research authenticating the submission, nor do they data appear in the format customary to Nielsen reports.²² KEYC-TV maintains that this is particularly suspicious since the whole of the Mankato DMA is well beyond the predicted Grade B contour of KSTC-TV.²³ Moreover, KEYC-TV argues that failure to provide a letter from Nielsen explaining its methodology raises a question of the surveys' reliability, particularly given the small sample sizes used.²⁴ Indeed, KEYC-TV notes the data provided by KSTC-TV is completely at odds with Nielsen's monthly printout of sweeps from February 2006, November

¹⁴*Id.* KSTC-TV states that it has received numerous inquiries from Mankato area viewers hoping to obtain its programming.

¹⁵*Id.* at 5.

¹⁶*Id.* at Attachment 1.

¹⁷Opposition at 1.

¹⁸*Id.* at 1-2.

¹⁹*Id.* at 2.

²⁰*Id.* KEYC-TV notes that in addition to the previously-named counties, a portion of Nicollet County is also part of the Mankato DMA.

²¹*Id.* at 3.

²²*Id.*

²³*Id.* KEYC-TV cites KSTC-TV's most recent application for modification of facilities (FCC File No. BPCT-20011109ACM).

²⁴*Id.* at 3-4.

2006, and February 2007; these record little, if any, any viewership data for KSTC-TV in the Mankato DMA and certainly not enough to meet the significantly viewed requirements.²⁵

5. In its reply, KSTC-TV argues that KEYC-TV has offered no evidence that grant of its request will cause it material economic harm or otherwise undermine its position in the Mankato DMA.²⁶ In addition, KSTC-TV states that KEYC-TV fails to acknowledge that there is considerable public support for grant of the instant request.²⁷ KSTC-TV also argues that KEYC-TV's position is specious given the reality that the Mankato DMA has only one local commercial television station – KEYC-TV.²⁸ In addition, KSTC-TV notes that, despite the fact that a number of other out-of-market stations are carried in the Mankato DMA by either cable or satellite, KEYC-TV remains the most-watched station in the market.²⁹ As a result, KSTC-TV maintains that, just like the other Minneapolis market stations, it would not be competing with KEYC-TV for local Mankato advertising revenues.³⁰ Finally, KSTC-TV argues that KEYC-TV's attempts to dispute the reliability of the survey data provided is misplaced and, in support, KSTC-TV submits a letter from Nielsen with an explanation of the methodology used.³¹ KSTC-TV submits that the Commission should rely on this data and grant its request.

6. We do not agree with KSTC-TV and will deny its request. Initially, we note that KSTC-TV has claimed that, as a result of a technical upgrade in 2002, it is entitled to be considered a “new” station as of that year for purposes of determining its significantly viewed status. Being considered a “new” station allows for the submission of county-wide audience statistics, rather than community-wide audience statistics, for three years after the “new” station status is obtained. However, KSTC-TV has provided no evidence to establish its new status. In *Calvert Telecommunications Corp. dba CALTEC*, the Commission established the criteria under which a station could be considered “new” for significantly viewed purposes.³² The Commission held that a station seeking “new” station status must submit evidence that demonstrates that it has undergone a major technical upgrade so significant as to be considered a new station. Upon such a showing, consistent with the Commission's *CALTEC* decision, a station would be allowed to submit county-wide survey data collected during the first three years after its upgrade rather than community-by-community studies. While the Commission did not establish a minimum standard for establishing “new” status in *CALTEC*, several subsequent decisions have given guidance in this area. In general, a technical upgrade must increase the station's radiated power and Grade B coverage a minimum of 41 percent or higher in order for a station to be considered “new” for significantly viewed purposes.³³ Other than stating that its facilities were technically upgraded in 2002, KSTC-TV has failed to demonstrate that it should be considered a “new” station for significantly viewed purposes.

²⁵*Id.* at Exhibits 1-4.

²⁶Reply at 2.

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰*Id.* at 2-3.

³¹*Id.* at 6-7.

³²63 FCC 2d 1022 (1977) (“*CALTEC*”).

³³See e.g., *Letter to JME Media, Inc.* (CSR-5330-S), released May 24, 1999; *Letter to Diversified Communications* (reconsideration of CSR-3817), released September 19, 1994.

7. Furthermore, even if KSTC-TV had obtained a waiver granting it “new” station status as of 2002, the viewership data provided in its current petition would not be acceptable. In its petition, KSTC-TV attempts to make a county-wide showing under the provisions of Section 76.54(d) of the rules. However, a Section 76.54(d) county-wide showing requires the submission of audience data for three four-week survey periods from the station’s first three years of operation.³⁴ Instead of submitting county-wide survey information from the required three survey periods, however, KSTC-TV submitted surveys for two one-week survey periods from a period more than three years after the claimed facility improvement in 2002. This is the type of surveys required to be performed when seeking significantly viewed status on a community-specific or system-specific basis, pursuant to Section 76.54(b) of the rules.³⁵ Community-specific surveys performed pursuant to Section 76.54(b) cannot be used to demonstrate significantly viewed status on a county-wide basis. As a result, KSTC-TV’s showing meets the requirements of neither the county-wide showing required by Section 76.54(d) nor the community-specific or system-specific showing required by Section 76.54(b), but inappropriately combines elements of both provisions. If KSTC-TV wishes to seek significantly viewed status on a community-specific or system-specific basis, pursuant to Section 76.54(b), it must identify the individual communities and/or cable systems surveyed in order to determine if the methodology employed in the surveys follows the statistical procedures set out for this type of showing. As discussed above, if KSTC-TV provides evidence establishing its “new” station status, it is free to seek significantly viewed status on a county-wide basis consistent with the procedures set out in Section 76.54(d) of the rules. In view of the foregoing, we find that KSTC-TV has failed to demonstrate that it is significantly viewed in the counties of Blue Earth, Brown, Watonwan, and Martin, Minnesota.

IV. CONCLUSION

8. In view of the foregoing, the petition for significantly viewed status filed on behalf of KSTC-TV, LLC, is **DENIED**.

9. This action is taken pursuant to the requirements set forth in Section 0.283 of the Commission’s rules.³⁶

FEDERAL COMMUNICATIONS COMMISSION

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³⁴47 C.F.R. § 76.54(d). Any station that went on-the-air after 1972, when the original significantly viewed surveys were performed, may use county-wide data for three four-week audience sweep periods from its first three years of operation. KSTC-TV began operation in 1994 and thus, generally, would be entitled to demonstrate significantly viewed status under Section 76.54(d).

³⁵47 C.F.R. § 76.54(b). Significantly viewed surveys performed pursuant to Section 76.54(b) cannot be used on a county-wide basis, but only for individual communities, or the communities comprising an individual cable system.

³⁶47 C.F.R. § 0.283.